



***Board of Zoning Appeals Public Hearing  
November 20, 2012 —7:00 P.M***

<b>CASE NUMBER:</b>	<b>V-12-021</b>
<b>PROPERTY LOCATION:</b>	<b>100 Block of Winford Close, Johns Creek, GA 30097 1<sup>st</sup> District, 1<sup>st</sup> Section Land Lot 308</b>
<b>CURRENT ZONING:</b>	<b>CUP Conditional (Community Unit Plan District)</b>
<b>PARCEL SIZE:</b>	<b>1.383 Acres</b>
<b>PROPERTY OWNER:</b>	<b>Siraj Ali</b>

**REQUEST**

The applicant requests a variance to encroach 23 feet into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback required by the City of Johns Creek to construct a 256 square-foot brick paver patio with 4 wooden benches in the rear yard. The subject property is located in the Abbotts Walk subdivision and Johns Creek meanders along the eastern property line of the property. The subject property was originally platted with a stream buffer requirement of 35 feet from the banks of the stream. Fulton County, and subsequently the City of Johns Creek, has adopted the larger stream buffer standards of a 50-foot undisturbed buffer and an additional 25-foot impervious surface setback. There currently exists on the property a two-story single family residential dwelling unit with a multi-story rear deck.

The Department would note that the subject lot was previously approved for a variance (V-12-008) by the Board of Zoning appeals on June 19, 2012, allowing a 25-foot encroachment into the stream buffer to construct a 100 square-foot deck staircase. This variance request has been submitted by the applicant due to a failed final site inspection performed on July 31, 2012; in which staff determined that a brick paver patio constructed in the rear yard, encroached further into the 75-foot stream buffer than previously allowed. A brick paver patio was not presented in the previously approved site plan, and has not been reviewed and approved by the Board of Zoning Appeals.

**ADJACENT ZONING AND LAND USES**

The subject property is zoned CUP Conditional (Community Unit Plan District) and is located within the Abbotts Walk subdivision. The subject property is a narrow and deep parcel of land, located near the intersection of Abbotts Walk Drive and Winford Close, and is surrounded by residential uses on three of the four sides. To the north of the subject property and neighborhood, across Abbotts Bridge Road is a large tract of land, zoned AG-1 (Agricultural District). East of the property is Abbotts Run subdivision, zoned CUP Conditional. To the west is Surrey Park subdivision, zoned R-3 Conditional. To the south and southwest of the subject property is St. Benedict Catholic Church, zoned R-3 and AG-1.

**APPLICABLE CODE REQUIREMENTS**

City Code; Chapter 109: Natural Resources & Environmental Protection; Article V: Stream Buffer Protection: Section 109-118: Land Development Requirements; (a) Buffer and setback requirements.

- 1) An undisturbed natural vegetative buffer shall be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the point of wrested vegetation.
- 2) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.
- 3) No septic tanks or septic tank drain fields shall be permitted within the buffer or the setback.

### **VARIANCE REQUIREMENTS**

Staff is including the specific conditions that must be considered for a variance to be granted in an effort to assist the Board of Zoning Appeals in considering the application and its merits. These considerations include:

- (i) When a property's shape, topography or other physical conditions existing at the time of the adoption of this ordinance prevents land development unless a buffer variance is granted.
- (ii) Unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship.

### **ADDITIONAL STREAM BUFFER CONSIDERATIONS**

Stream buffers are the areas of land immediately adjacent to the banks of state waters which facilitate the protection of water quality and aquatic habitat. Buffers also preserve green space, improve aesthetics, reduce stormwater runoff velocities, help control flooding, and keep stream water cool by providing shade. These buffers must remain undisturbed in their natural state during and after construction, however variances can be obtained that allow for encroachment under certain conditions. Stream buffers are regulated on both the state and local levels and each agency has different rules regarding buffer widths. The Georgia Environmental Protection Division (EPD) requires 25 foot buffers on both sides of a stream, measured from the point of wrested vegetation which is usually located at the tops of the banks. The City of Johns Creek requires an undisturbed buffer of 50 feet with an additional 25 feet where all impervious surfaces are prohibited. Variance applications may be granted on a case by case basis provided the applicant submit information showing the location of the stream, the extent of encroachment, and documentation of the unusual hardship should the buffer be maintained. These variance applications must also provide mitigation measures to offset the impacts of land development or disturbance on the proposed property. Although allowed by ordinance, granting of stream buffer variances should be kept to a practicable minimum in order to preserve water quality and minimize flood risks from future, upstream development. The location and extent of buffer encroachment, long term water quality impacts, and potential, less intrusive alternate designs are all factors to be considered in determining whether to issue a variance. Stream Buffer Variances granted by the City of Johns Creek are subject to annual audits by the Metropolitan North Georgia Water Planning District and the EPD. The City must ensure that consistency and thorough examination to long term impacts are considered in order to justify granting variances.

### **RECOMMENDATION**

The subject property was originally platted with a 35-foot stream buffer from the banks of the creek. The applicant has proposed construction of a 256 square-foot brick paver patio with 4 wooden benches along two sides of the patio. The patio is connected to a newly constructed multi-story deck by a landing pad and deck

stairs. Due to the placement of the brick patio a 23-foot encroachment into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback has been requested by the applicant.

The site plan submitted by the applicant illustrates the proposed patio would encroach six to seven feet beyond the originally plated 35-foot stream buffer and be placed wholly within the 50-foot undisturbed portion of the stream buffer. The placement of the patio closer to the stream may adversely impact the stream by increasing stormwater runoff, erosion of stream banks, and larger sediment deposition into the stream. Additionally, nearly one-third of the required 75-foot stream buffer would be occupied in part by impervious surface and could limit the restoration of natural vegetation adjacent to the stream and further negatively impact the stream.

Furthermore, policies of the board has been to maintain the originally platted stream buffer limits to assure areas closest to the stream would maintain its natural character. Overall, the purpose of the stream buffer ordinance is to protect public health, safety, environment and general welfare, and further to minimize public and private losses due to erosion, siltation, and water pollution by maintaining stream water quality. Allowing impervious surfaces to be located beyond the originally platted limits of the stream buffer may adversely affect the stream, existing vegetation, and potentially water quality in the future.

In light of the proposed brick paver patio extending beyond the originally platted 35-foot stream buffer, the Department of Community and Development recommends **DENIAL** of this request.

Based upon the findings and conclusions herein, Staff recommends **DENIAL** of this request. Should the petition be approved by the Board of Zoning Appeals, the Department has provided the following conditions of approval as a guide:

- 1) The brick paver patio shall encroach no more than 23 feet in depth into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback, as shown on the site plan dated September 4, 2012.
- 2) The brick paver patio shall not exceed 256 square feet of additional impervious surface in the rear yard, and the configuration of the patio shall not be altered from the site plan dated September 4, 2012.
- 3) Dirt fill shall be prohibited within the portion of the 100-year floodplain.
- 4) Obtain required building permits from the City of Johns Creek Community Development Department prior to commencing construction of the deck staircase.
- 5) The applicant is required, prior to issuance of a certificate of completion, to replant vegetation on the subject property to offset any adverse impact associated with the additional impervious surface closer to the stream. Replanting of vegetation shall be consistent with the submitted mitigation plan dated September 24, 2012.

### Aerial and Vicinity Map

